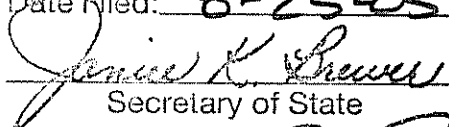



AG Contract No.: KR05-0196-TRN  
ADOT ECS File No. JPA 03-012  
**FCDMC IGA FCD 2004A009**  
FCD PCN 300.02.01  
TRACS No.:H5782 01C  
Section: SR 202L Red Mountain Freeway  
Power Road – University Drive

NO. 276946  
Filed with the Secretary of State  
Date Filed: 8-25-05  
  
Secretary of State  
By: 

**INTERGOVERNMENTAL AGREEMENT  
Red Mountain Freeway/Spook Hill FRS**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

**THIS AGREEMENT** is entered into 25<sup>th</sup> August, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY (the "FCDMC"), acting by and through its BOARD OF DIRECTORS (the "FCDMC").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The FCDMC is empowered by Arizona Revised Statutes Section 48-3603 to enter into this Agreement and has by Resolution FCD 2003R005 resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the FCDMC.

**II. DEFINITIONS**

**The Spook Hill Flood Retarding Structure (FRS)** is a structural plan element of the Watershed Work Plan for the Buckhorn-Mesa Watershed, Maricopa and Pinal Counties, Arizona prepared by the Natural Resources Conservation Service (NRCS; formerly Soil Conservation Service, SCS) in January 1963. The Spook Hill FRS was constructed by the NRCS (completed in 1980) with the FCDMC as the local sponsor. The FCDMC operates and maintains the Buckhorn-Mesa Watershed Project (inclusive of Spook Hill FRS) under Agreements with NRCS. The Arizona Department of Water Resources (ADWR) is the jurisdictional agency for dam safety for the Spook Hill FRS.

**The Buckhorn-Mesa Watershed Project** is an integrated system of floodwater retarding structures and floodways. The Spook Hill FRS was designed to impound floodwaters for rainfall events up to the 100-year storm and controls discharges for larger rainfall events through the emergency spillway. The Signal Butte Floodway discharges into the Spook Hill FRS at the south end of the Spook Hill FRS. Flows discharged from the Signal Butte Floodway, in conjunction with storm water runoff from the Spook Hill FRS watershed, are impounded and conveyed north by the Spook Hill FRS to the principal and

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emergency spillways located north of McDowell Road and east of Power Road. The principal spillway controls discharges from the Spook Hill FRS to the Spook Hill Floodway. The Spook Hill Floodway conveys the flows from the Spook Hill FRS to the Salt River.

### **III. BACKGROUND AND CONCEPT**

1. The State's SR 202L Red Mountain Freeway from Power Road to University Drive, herein after referred to as the "PROJECT" will require the alteration of the existing Spook Hill FRS to maintain its current function upon completion of PROJECT construction. The construction of the PROJECT will include, at no cost to the FCDMC, alteration of the Spook Hill FRS embankment and appurtenant structures within the limits of the embankment impact areas as shown on Exhibit A, attached hereto and made a part hereof. At no time is the State to be considered the owner of, or operator of, the Spook Hill FRS.

2. The FCDMC requests certain work for the Spook Hill FRS, rehabilitation and other related enhancements listed below to be incorporated in the State's construction of the PROJECT, herein after referred to as the "REHABILITATION WORK". The FCDMC will fund the REHABILITATION WORK, in an estimated amount of \$ 2,634,782.00, including design and construction engineering administration costs, as shown on Exhibit B, attached hereto and made a part hereof. The FCDMC funding for the REHABILITATION WORK will be reimbursed by State funds, which will be credited to the FCDMC as market value compensation for PROJECT utilization of FCDMC property in an amount which is estimated and agreed to exceed the cost of the REHABILITATION WORK as described herein. The market value of the FCDMC property shall be determined by appraisal and agreed to in writing by the State and the FCDMC per section IV.1.t herein. The following REHABILITATION WORK will be incorporated into the construction of the PROJECT to benefit the FCDMC:

a) Corrective action to fill existing erosion areas on the upstream and downstream embankment slopes of the existing Spook Hill FRS,

b) Installation of a central filter in the existing Spook Hill FRS embankment outside of the limits of the embankment impact areas as shown on Exhibit A.

3. The State has determined that the replacement of the existing principal spillway with a new principal spillway benefits the PROJECT by reducing the amount of excavation required within the Spook Hill FRS flood pool and, therefore, overall PROJECT costs. The PROJECT will include, at no cost to the FCDMC, replacement of the existing principal spillway with a new principal spillway.

4. The State and FCDMC have determined that the PROJECT will result in an increase in maintenance responsibilities and long-term cost of maintenance to the FCDMC. In compensation for the additional long-term cost of the additional FCDMC maintenance responsibilities, the FCDMC agrees to accept modifications to the proposed new principal spillway and Signal Butte Floodway outlet structure, completed as part of the PROJECT, that will enhance the FCDMC mosquito-control program and allow for the timely removal of sediment immediately after a storm event.

5. The parties herein agree to and acknowledge the following conditions: 1) The amounts referenced in this Agreement are subject to change and can change substantially; 2) All parties will perform their responsibilities consistent with this Agreement; and 3) Any changes to the related items listed on Exhibits A, B, and C will only occur with the mutual written Agreement of the FCDMC and the State.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

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**IV. SCOPE OF WORK****1. The State Will:**

a. Be responsible for the actual costs associated with construction of the PROJECT estimated at development stage IV to be \$ 144,100,000.00.

b. Upon completion of PROJECT construction and final approval by ADWR and the FCDMC of the completion documents required pursuant to Arizona Administrative Code R12-15-1213, and final reconciliation of the PROJECT construction costs, remit within 60 days of invoice to the FCDMC for the difference between the market value compensation for PROJECT utilization of FCDMC property and the amount paid by the State for the actual costs for the REHABILITATION WORK, including, but not limited to: design, and a fixed rate for construction engineering and administration costs as noted in Exhibit B.

c. Agree to be the authorized agent for the FCDMC and on behalf of the FCDMC prepare to ADWR, NRCS, and FCDMC standards: all design plans, specifications, and other such documents and services required for the bidding and construction of the PROJECT and REHABILITATION WORK. Coordinate with ADWR, NRCS, and FCDMC for review of the above said documents and incorporate review comments as appropriate. As authorized agent for the FCDMC the State acknowledges that any time during construction of PROJECT features related to flood operations the FCDMC may request a stoppage of construction through the State's Resident Engineer.

d. THE STATE AGREES to comply with the following conditions with respect to dam safety issues related to the PROJECT:

- Address all PROJECT and REHABILITATION WORK related dam safety issues identified by the FCDMC, ADWR, and NRCS.
- Agree to implement the PROJECT so that it will not adversely impact risk to public safety associated with the existing Buckhorn-Mesa Watershed Project.
- Agree to implement the PROJECT so that it will not prevent or limit the District's ability to accomplish risk reduction goals when applied to the existing Buckhorn-Mesa Watershed Project.
- Agree to implement the PROJECT so as to maintain the FCDMC's current flexibility to feasibly modify and/or repair the Spook Hill FRS and associated features in the future, and to feasibly address future dam safety regulatory changes.

e. The State agrees to comply with the following conditions with respect to the design issues related to the PROJECT:

- The Spook Hill FRS functions both as an impoundment structure and as a conveyance structure. As such, the freeway crossroad designs will accommodate, as a minimum, the same level of conveyance as the existing condition. Design flows to both the principal spillway and the emergency spillway will not be adversely impacted by the PROJECT. Technical data will be submitted for review and approval to the FCDMC, ADWR and NRCS to substantiate that the PROJECT has no adverse impacts to: lateral conveyance to the principal spillway and emergency spillway; downstream discharges; and associated potential inundation areas and reservoir impoundments outside of FCDMC land rights areas.
- Alternatives involving construction of a basin(s) to offset current reservoir pool storage lost to the PROJECT construction will address the following:
  - The replacement storage volume must maintain the conveyance function of the Spook Hill FRS to the principal spillway and to the emergency spillway.
  - The replacement storage volume must be gravity drained.
- The PROJECT will not reduce existing flood protection benefits associated with the Buckhorn-Mesa Watershed Project. The PROJECT shall not increase the 100-year flood

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pool water surface elevation, as analyzed under existing conditions, nor increase the maximum reservoir water surface elevation under the Probable Maximum Flood.

- The PROJECT will be compatible with the Spook Hill FRS ADMP Recommended Plan as adopted by the FCDMC Board of Directors in November 2002.
- The PROJECT plans will address pollutant wash loads from the freeway and associated features in accordance with the State's AZPDES Permit requirements.
- The PROJECT plans will address all regulatory requirements pertaining to the potential for toxic spills on the freeway and address, as needed, the special condition of the freeway located in a flood pool impoundment area.
- The PROJECT will not prohibit or impede FCDMC structural solutions that may be needed to address future AZPDES requirements, related to runoff from the Buckhorn-Mesa Watershed Project watershed area.
- Operation and maintenance (O&M) design issues such as O&M access to the Spook Hill FRS and related features, and emergency access to the Spook Hill FRS and related features, will be incorporated into the PROJECT design.
- The PROJECT will be compatible with the FCDMC IGA #85007 dated June 17, 1985, with the City of Mesa concerning recreational development at the Spook Hill FRS and Spook Hill Floodway, and with the approved Red Mountain Freeway Final Environmental Impact Statement (FEIS).
- The PROJECT will provide for mitigation of existing trees and desert vegetation on FCDMC fee land and easement property, located in Section 8 of T1N and R7E, impacted by construction of the PROJECT and not addressed by the FEIS mitigation plan. The State will be responsible for the development of a Flood Pool Habitat Mitigation and Monitoring Plan for re-vegetated FCDMC fee land and easement property, located in Section 8 of T1N and R7E, not addressed by the FEIS Habitat Mitigation and Monitoring Plan (Corps of Engineers file Number 964-0536-LSF) dated December 1998 that shall be equal in scope to the FEIS Habitat Mitigation and Monitoring Plan.

f. Agree on behalf of the FCDMC, to incorporate the items referenced above in Article III. 2a. & 2b. into the State's PROJECT as follows:

- Provide design plans, specifications and other such documents and services required for construction bidding and construction. Confer with the FCDMC, ADWR, and NRCS on any contract modifications related to the PROJECT.
- Call for bids and award one or more construction contract(s), administer same and make all payments to the contractor(s) and be responsible for contractor claims for extra compensation due to delays for whatever reason attributable to the State.

g. Obtain the following permits and approvals:

- Rights-of-Way use permits from the FCDMC including a Rights-of-Way Use Permit for the proposed roadway easement as shown on Exhibit C, attached hereto and made a part hereof. The Rights-of-Way Use Permits shall be obtained prior to the beginning of the PROJECT construction.
- Floodplain use permit from the FCDMC.
- An "approval to construct" from ADWR to alter the Spook Hill FRS. The State will be responsible for completing the ADWR checklist and associated technical documents in accordance with Arizona Administrative Code R12-15-1207 and 1208. The State will be responsible for the ADWR application fee.
- Approval from NRCS on all proposed modifications to the Buckhorn-Mesa Watershed Project.
- All other permits and agreements required for the construction, maintenance, and operation of PROJECT, including easements.

h. Obtain a Conditional Letter of Map Revision (CLOMR) for the PROJECT prior to the approval of PROJECT construction. A Letter of Map Revision (LOMR) will also be required at the completion of PROJECT construction. The State and FCDMC responsibilities for the CLOMR and LOMR are as follows:

- The State shall perform and prepare all technical studies and documentation including FEMA forms sealed by a registered engineer necessary for the CLOMR and LOMR process.
- The FCDMC will obtain concurrence from the City of Mesa, and formally submit the CLOMR and LOMR to FEMA. The State will be responsible for any fees required for a CLOMR and LOMR.

i. Agree on the following with respect to utilities within the PROJECT area:

- Be responsible for identification and relocation of all existing utilities as required for the PROJECT construction.
- Ensure that all utility relocations at or along the Spook Hill FRS are installed in accordance with current dam safety practice and subject to approval by the FCDMC, ADWR, and NRCS.

j. Provide to the FCDMC all PROJECT draft technical documents and draft technical reports (applicable to the Buckhorn-Mesa Watershed Project) for review and comment.

k. Provide to the FCDMC, ADWR, and NRCS all PROJECT construction plans and specifications for review and comment.

l. Provide to the FCDMC copies of all final PROJECT technical reports, PROJECT construction documents and PROJECT as-built drawings applicable to the Buckhorn-Mesa Watershed Project. The State will file ADWR completion documents pursuant to A.A.C. R12-15-1213.

m. Provide market value compensation to the FCDMC for PROJECT utilization of FCDMC property in accordance with Article IV.1b above.

n. Address all FCDMC O&M issues of the Buckhorn-Mesa Watershed Project related to the PROJECT inclusive of the following:

- The PROJECT will not cause FCDMC O&M maintenance responsibility for the Buckhorn-Mesa Watershed Project to increase except as otherwise negotiated and agreed to in writing between State and the FCDMC. State and FCDMC have agreed as part of this agreement that in exchange for State constructing a dewatering pump station for the Energy Dissipater and a turn around pad that FCDMC will accept operation and maintenance responsibility for catch basin and down drain pipe systems on the east side of the flood pool constructed as part of the Project. The FCDMC increased O&M responsibility is agreed to be offset by State's construction of these facilities.
- Coordinate with the FCDMC in assuring that the PROJECT will include features that will accommodate FCDMC O&M requirements for the Buckhorn-Mesa Watershed Project.
- Develop O&M procedures and an O&M manual(s) in coordination with the FCDMC for any PROJECT feature that will cause a change to current FCDMC O&M procedures for the Buckhorn-Mesa Watershed Project.

o. Develop and implement applicable Emergency Action Plans for the PROJECT in accordance with the following:

- The majority of the PROJECT and REHABILITATION WORK is located in a flood impoundment pool of the Buckhorn-Mesa Watershed Project and is subject to flooding at any time. The existing Buckhorn-Mesa Watershed Project functions to provide significant downstream flood protection.

- Develop Emergency Action Plans as required by ADWR and the FCDMC for the PROJECT. Interim Emergency Action Plans during PROJECT construction and Emergency Action Plans will be required for as long as State operates the Power Road to University Drive section of the Red Mountain Freeway. The State will be responsible for implementation of all Freeway Emergency Action Plan measures during PROJECT and REHABILITATION WORK construction and for as long as State operates the Power Road to University Drive section of the Red Mountain Freeway except as may otherwise be negotiated by formal agreement between the State and the FCDMC.
  - Coordinate freeway operations with the FCDMC during any emergency that may require FCDMC access to State rights-of-way to conduct flood-fighting operations as identified in the State and FCDMC Emergency Action Plans.
  - Provide funds to the FCDMC in the amount of \$131,310.00 as noted in Exhibit B for the installation and maintenance of three (3) rain/stream, one (1) stream, and four (4) rain ALERT gauges. The agreed upon maintenance period is 25-years.
  - Provide to the FCDMC a Plan for Downstream Flood Protection during PROJECT and REHABILITATION WORK construction for review and approval at or prior to construction.
- p. Coordinate with the FCDMC during construction of the PROJECT and REHABILITATION WORK as follows:
- Provide identified contract technical submittals to the FCDMC for review and comment.
  - Invite the FCDMC to weekly PROJECT construction meetings and PROJECT and REHABILITATION WORK partnering meetings.
  - Provide FCDMC representatives access to the construction site for inspection of construction work related to the Buckhorn-Mesa Watershed Project. The FCDMC will coordinate with ADOT in providing advance notification of inspection requests and will follow all ADOT construction safety procedures.
  - Coordinate with the FCDMC in assuring PROJECT and REHABILITATION WORK construction activities allow for FCDMC O&M and Dam Safety Program activities of the Buckhorn-Mesa Watershed Project during the PROJECT and REHABILITATION WORK construction period.
  - Provide FCDMC representatives (and FCDMC equipment as may be needed) immediate access to any FCDMC land rights area deemed by the FCDMC to be needed for flood operations or any emergency measures required for the Buckhorn-Mesa Watershed Project during the PROJECT and REHABILITATION WORK construction period. The State and the FCDMC shall designate a 24-hour point of contact during construction.
- q. Upon completion of PROJECT and REHABILITATION WORK construction, assume responsibility for the operation, maintenance and ownership for the State's facilities. The State's maintenance responsibilities shall be defined and included with the FCDMC Rights-of-Way Use Permit application.
- r. The State will be responsible for the implementation of a Flood Pool Habitat Mitigation and Monitoring Plan for re-vegetated FCDMC fee land and easement property not addressed by the FEIS Habitat Mitigation and Monitoring Plan, and implementation of the FEIS Habitat Mitigation and Monitoring Plan. The State's responsibility shall be limited to landscape and irrigation system maintenance during the 2 year mitigation and 5 year monitoring period.
- s. Provide to the FCDMC Section 404 Permit Exhibits in the name of the FCDMC for the operation and maintenance of the relocated low flow channel. The State Section 404 Permit will be independent of the FCDMC's Section 404 Permit for the Project, and will define the maintenance responsibilities of the State within the FEIS Mitigation Site that is located within the relocated low flow channel.

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- t. The State shall acquire permanent land rights from the FCDMC by either negotiation with the FCDMC to agreed upon market value compensation, or the State will commence condemnation proceedings to acquire permanent lands rights within one year of the notice to proceed for PROJECT construction. The date of valuation for the land rights shall be the date of the notice to proceed for PROJECT construction. The rights and obligations of the State and the FCDMC as provided in this agreement shall continue even if the State files condemnation proceedings against the FCDMC to determine market value.

2. The FCDMC will:

- a. Upon completion of PROJECT and REHABILITATION WORK construction and final approval by ADWR of the completion documents required pursuant to Arizona Administrative Code R12-15-1213, and final reconciliation of the PROJECT and REHABILITATION WORK construction costs, invoice the STATE for the difference between the market value compensation for PROJECT utilization of property as shown on Exhibit C and the amount of actual costs for the REHABILITATION WORK, including, but not limited to: design and construction, and a fixed rate for construction engineering and administrative costs as noted in Exhibit B.

- b. Agree to designate the State as authorized agent for the FCDMC, for the filing of an alteration application for "approval to construct" from ADWR to alter the Spook Hill FRS. By designating the State as authorized agent for construction of the PROJECT the FCDMC acknowledges that construction activities can only be halted by the State's Resident Engineer.

- c. Be responsible for accomplishing any FCDMC FRS rehabilitation activities, which are outside of the PROJECT and the REHABILITATION WORK, except as may be otherwise be negotiated and agreed to in writing between the State and the FCDMC.

- d. Review and provide comments to the State on all PROJECT and REHABILITATION WORK draft technical documents and draft technical reports applicable to the Buckhorn-Mesa Watershed Project. The FCDMC shall review the State's submittal and return review comments to the State within two weeks after the submittal has been delivered to the FCDMC.

- e. Review and provide comments to the State on all construction plans and specifications for review and comment. The FCDMC shall review the State's submittal and return review comments to the State after the submittal has been delivered to the FCDMC and a design working review meeting has been held with the FCDMC, ADWR, and NRCS.

- f. Coordinate with the State, for review and clearance of the utility relocations and other roadway items related to the PROJECT and REHABILITATION WORK and issue new easements for relocated utilities not found to be in trespass. Any utilities identified as being in trespass will be required to pay for an easement grant prior to being relocated.

- g. Coordinate with the State in providing advance notification of inspection requests and follow all State construction safety procedures. The FCDMC shall provide for inspection of construction activities related to FCDMC structures and notify the State's Resident Engineer of any concerns.

- h. Be responsible for any contractor claims for delay and/or extra compensation attributable to the FCDMC as reflected in a change order for work not included in the ADWR Permit to Construct and review all such change orders. Change orders, which reflect additional compensation by the FCDMC, will require prior approval and acceptance of the change order by the FCDMC.

i. Be responsible for all costs associated with the REHABILITATION WORK as defined herein and shown in Exhibit B, including a fixed rate for construction engineering and administration of the REHABILITATION WORK.

j. Upon completion of the PROJECT and REHABILITATION WORK resume responsibility for operation and maintenance for the FCDMC elements, except for maintenance of the re-vegetated flood pool area and FEIS mitigation area landscaping and irrigation systems. The FCDMC's maintenance responsibility shall be defined and included with the State's submittal of the FCDMC Rights-of-Way Use Permit application. The FCDMC will resume responsibility for maintenance of the re-vegetated flood pool area and FEIS mitigation area following completion of mitigation as detailed in the FEIS Habitat Mitigation and Monitoring Plan and of the Flood Pool Habitat Mitigation and Monitoring Plan, expected to be 5 years following completion of the PROJECT.

k. Upon completion of the PROJECT and REHABILITATION WORK, final approval by ADWR of the completion documents required pursuant to A.A.C. R12-15-1213, and delivery of the PROJECT'S and REHABILITATION WORK'S red-line plans (As-Built) by the State, assume Blue Stake responsibility for the Spook Hill FRS as identified in Exhibit E.

l. Upon completion of the PROJECT and REHABILITATION WORK, maintain and operate FCDMC facilities covered by this Agreement and be responsible for the cost there from except for maintenance of the re-vegetated flood pool area and FEIS mitigation area landscaping and irrigation systems. The FCDMC will resume responsibility for maintenance of the re-vegetated flood pool area and FEIS mitigation area landscaping following completion of mitigation as detailed in the FEIS Habitat Mitigation and Monitoring Plan and of the Flood Pool Habitat Mitigation and Monitoring Plan. Maintenance, operations, and associated costs for the FCDMC's facilities covered by the agreement will be the responsibility of the FCDMC. At no time is the State to be considered the owner of, or operator of the Spook Hill FRS.

m. Apply for a State Rights-of-Way Use Permit for all work within the State's Control of Access. The Permit Application shall be requested and approved through the State's Phoenix Maintenance Permits Office. The permit will be provided to the FCDMC at no cost to the FCDMC.

n. Install and maintain, for a period of 25-years, three (3) rain/stream, one (1) stream, and four (4) rain ALERT gauges to be used by the State for the implementation of after PROJECT Emergency Action Plan measures for the SR 202L Red Mountain Freeway from Power Road to University Drive.

o. Obtain a Section 404 Permit in the name of the FCDMC for the operation and maintenance of the relocated low flow channel. The FCDMC Section 404 permit will be independent of State's Section 404 Permit for the Project, and will define the maintenance responsibilities of the FCDMC within the FEIS Mitigation Site that is located within the relocated low flow channel.

## **V. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in force and effect for the life of the PROJECT with the exception of the PROJECT and REHABILITATION WORK design and construction provisions which shall terminate upon final approval by ADWR and the FCDMC of the completion documents required pursuant to Arizona Administrative Code R12-15-1213, payment provisions as provided in Sections IV.1.b. and IV.2.b., habitat mitigation and monitoring provisions as provided in Sections IV.1.e. and IV.2.j., and ALERT gauge maintenance provisions as provided in Section IV.2.o. This Agreement may be cancelled at any time prior to the award of a construction contract, upon thirty-days (30) written notice to the other party. It is understood and agreed that, in the event the FCDMC terminates this agreement, the State shall in no way be obligated to maintain the Spook Hill FRS.

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2. The majority of the PROJECT is located in a flood impoundment pool of the Buckhorn-Mesa Watershed Project and as such is subject to flooding at any time. The State will indemnify, defend and hold harmless the FCDMC from any and all PROJECT impacts related to flood operations and flood protection provided by the Buckhorn-Mesa Watershed Project during PROJECT construction.

3. The State will indemnify, defend, save and hold harmless the FCDMC from any and all claims, losses, liability, costs, damages to persons and or property or any other claims, losses or damages, including reasonable attorney fees and costs, resulting from the State construction and operation of the PROJECT and/or uses of the property after the construction is complete. This indemnification shall specifically extend to but is not limited to, claims or damages including environmental impacts, damages, or injuries caused by public transportation uses of the freeway. The FCDMC will indemnify, defend, save and hold harmless the State from any claims, losses or damages to persons or property, including reasonable attorney fees and costs, arising out of any FCDMC FRS rehabilitation activities outside of the PROJECT and for the operation and maintenance of the FCDMC elements as provided in this agreement.

4. This Agreement shall become effective upon filing with the Secretary of State and shall continue for the life of the PROJECT.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State and FCDMC under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract and for compensation to the FCDMC for the market value of the FCDMC real property to be used for the PROJECT, this contract may be terminated by the State or the FCDMC prior to any physical alterations to Spook Hill FRS. This contract may be terminated by the State or the FCDMC after any physical alteration to Spook Hill FRS only if the party seeking termination has sufficient funds immediately available to repair or restore Spook Hill FRS to its original condition or condition acceptable to FCDMC, ADWR and NRCS. The State may not terminate this contract after any physical alteration to Spook Hill FRS until it has paid all amounts due to the FCDMC for market value of the FCDMC real property used for the PROJECT.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Flood Control District of Maricopa County  
Chief Engineer and General Manager  
2801 West Durango Street  
Phoenix, Arizona 85009

Revision Date:  
August 9, 2005

FAX: 602-712-7424

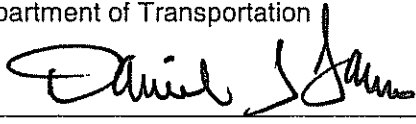
FAX: 602-506-8561

11. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

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Department of Transportation

By 

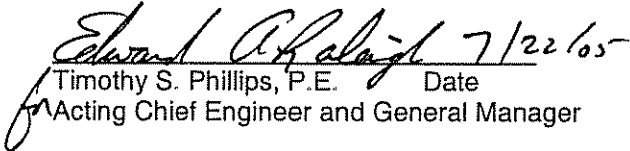
DANIEL S. LANCE, P.E.

Deputy State Engineer, Valley Transportation

Revision Date:  
June 20, 2005

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY  
A Municipal Corporation

Recommended by:

 7/22/05  
Timothy S. Phillips, P.E. Date  
Acting Chief Engineer and General Manager

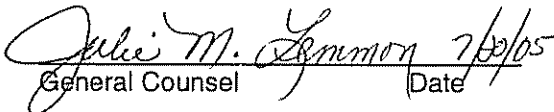
Approved and Accepted:

By:  AUG 10 2005  
Chairman, Board of Directors Date

Attest:

By:  AUG 10 2005  
Clerk of the Board Date

The foregoing Intergovernmental Agreement FCD 2004A009 has been reviewed pursuant to Arizona Revised Statutes §11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

 7/20/05  
General Counsel Date

Revision Date:  
June 20, 2005



TERRY GODDARD  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TRANSPORTATION SECTION  
WRITER'S DIRECT NO: 602.542.8837

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-0196-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 22 August 2005

Terry Goddard  
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over a horizontal line.

James R. Redpath  
Assistant Attorney General  
Transportation Section

JRR:djd:780214

JPA 03-012 (IGA FCD 2004A009)



SPOOK HILL FRS EMBANKMENT



EMBANKMENT IMPACT AREA



## EXHIBIT A

SHEET 1 OF 2  
SCALE: 1" = 1200'

JPA 03-012 (IGA FCD 2004A009)



SPOOK HILL FRS EMBANKMENT



EMBANKMENT IMPACT AREA



EXHIBIT A

SHEET 2 OF 2  
SCALE: 1" = 1200'

EXHIBIT B  
ITEM 1 SUMMARY BACKUP

EXHIBIT B  
SUMMARY

RED MOUNTAIN FREEWAY (SR 202L)  
POWER ROAD TO UNIVERSITY DRIVE  
DESCRIPTION AND COST OF REHABILITATION WORK PAY ITEMS FOR THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

ITEM	COST			DESCRIPTION
	DESIGN	CONSTRUCTION	TOTAL	
1 GEOTECHNICAL INVESTIGATION AND DESIGN	\$146,985	\$0	\$146,985	Geotechnical investigation and design of central filler and erosion repair.
2 FRS EROSION REPAIR	\$0	\$868,856	\$868,856	Corrective action to fill existing erosion areas on the upstream and downstream embankment slopes of the existing Spook Hill FRS.
3 FRS CENTRAL FILTER INSTALLATION	\$0	\$1,618,942	\$1,618,942	Installation of a central filler in the existing Spook Hill FRS embankment outside of the limits of the PROJECT impact areas as shown on Exhibit A.
4 PRINCIPAL SPILLWAY	\$0	\$0	\$0	The State has determined that the replacement of the existing principal spillway with a new principal spillway benefits the PROJECT by reducing the amount of excavation required within the Spook Hill FRS flood pool and, therefore, overall PROJECT costs. The PROJECT will include, at no cost to the FCDMC, replacement of the existing principal spillway with a new principal spillway.
5 SIGNAL BUTTE FLOODWAY OUTLET STRUCTURE	\$0	\$0	\$0	The State and FCDMC have determined that the PROJECT will result in an increase in maintenance responsibilities and long-term cost of maintenance to the FCDMC. In compensation for the additional long-term cost of the additional FCDMC maintenance responsibilities, the FCDMC agrees to accept modifications to the proposed new principal spillway and Signal Butte Floodway outlet structure, completed as part of the PROJECT, that will enhance the FCDMC mosquito-control program and allow for the timely removal of sediment immediately after a storm event.
Items 1-5 SubTotal:	\$146,985	\$2,487,797	\$2,634,782	
6 RAIN AND ALERT GAUGES	\$0	-\$131,310	-\$131,310	The State will provide funds to the FCDMC in the amount of \$131,310.00 for the installation and maintenance of three (3) rainstream, one (1) stream and four (4) rain ALERT gauges. The agreed upon maintenance period is 25-years. ADOT will provide separate payment to a specific account at FCDMC in this amount to cover the installation and maintenance of the Rain and Alert Gauges.
Net Total:	\$146,985	\$2,356,487	\$2,503,472	



**EXHIBIT B  
ITEM 1 SUMMARY BACKUP**

Engineer's Estimate Version (05%)  
JPA 03-012  
IGA FCD 2004A009  
Date: 6/20/2005

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	ITEM 1 - GEOTECHNICAL INVESTIGATION AND DESIGN				
2					
3				\$	-
4				\$	-
5				\$	-
6				\$	-
7					
8	SUBTOTAL ITEM 1 - GEOTECHNICAL INVESTIGATION AND DESIGN			\$	(A)
9					
10	MAINTENANCE OF TRAFFIC SHARE <sup>1</sup>	L.SUM	1	1.5% of (A)	\$ -
11	CONSTRUCTION SURVEYING AND LAYOUT SHARE <sup>2</sup>	L.SUM	1	1% of (A)	\$ -
12	CONTRACTOR QUALITY CONTROL SHARE <sup>3</sup>	L.SUM	1	1% of (A)	\$ -
13	MOBILIZATION SHARE <sup>4</sup>	L.SUM	1	10% of (A)	\$ -
14	SUBTOTAL CONSTRUCTION COST			\$	(B)
15	CONSTRUCTION ENGINEERING AND ADMINISTRATION <sup>5</sup>			\$	-
16	DESIGN ENGINEERING & ADMINISTRATION			\$	146,985.00 (C)
17					
18	TOTAL ITEM 1 - GEOTECHNICAL INVESTIGATION AND DESIGN			\$	146,985.00

1. Maintenance of Traffic does not apply to this item of work.
2. Construction surveying and Layout does not apply to this item of work.
3. Contractor Quality Control does not apply to this item of work.
4. Mobilization does not apply to this item of work.
5. Construction Engineering and Administration does not apply to this item of work.

**EXHIBIT B**  
**ITEM 1 SUMMARY BACKUP**

Engineer's Estimate Version (95%)  
JPA 03-012  
IGA FCD 2004A009  
Date: 6/20/2005

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	ITEM 2 - FRS EROSION REPAIR				
2					
3	MISCELLANEOUS WORK (EXCAVATION, FRS EROSION REPAIR)	CU.YD.	71,500	\$ 1.50	\$ 107,250.00
4	MISCELLANEOUS WORK (STRUCTURAL FILL, FRS EROSION REPAIR)	CU.YD.	47,600	\$ 3.00	\$ 142,800.00
5	MISCELLANEOUS WORK (CREST AGGREGATE BASE)	TONS	3,150	\$ 20.00	\$ 63,000.00
6	MISCELLANEOUS WORK (HYDRO SEED SLOPES)	ACRE	30.0	\$ 2,000.00	\$ 60,000.00
7	MISCELLANEOUS WORK (GRAVEL MULCH ON SLOPE)	TONS	19,313	\$ 20.00	\$ 386,260.00
8					
9	SUBTOTAL ITEM 2 - FRS EROSION REPAIR				\$ 759,310.00 (A)
10	MAINTENANCE OF TRAFFIC SHARE <sup>1</sup>	L.SUM	1	1.5% of (A)	\$ -
11	CONSTRUCTION SURVEYING AND LAYOUT SHARE <sup>2</sup>	L.SUM	1	1% of (A)	\$ 7,593.10
12	CONTRACTOR QUALITY CONTROL SHARE <sup>3</sup>	L.SUM	1	1% of (A)	\$ 7,593.10
13	MOBILIZATION SHARE <sup>4</sup>	L.SUM	1		\$ 30,000.00
14	SUBTOTAL CONSTRUCTION COST				\$ 804,496.20 (B)
15	CONSTRUCTION ENGINEERING AND ADMINISTRATION <sup>5</sup>			8% OF (B)	\$ 64,359.70
16					\$ -
17					\$ -
18	TOTAL ITEM 2 - FRS EROSION REPAIR				\$ 868,855.90

1. Maintenance of Traffic does not apply to this item of work.
2. Construction surveying and Layout is calculated on a percentage basis (1.0% Fixed rate) of the construction cost.
3. Contractor Quality Control is calculated on a percentage basis (1.0% fixed rate) of the construction cost.
4. Mobilization is established as a fixed lump sum cost.
5. Construction Engineering and Administration is calculated on a percentage basis (8.0% fixed rate) of the construction.

EXHIBIT B  
ITEM 1 SUMMARY BACKUP

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	ITEM 3 - FRS CENTRAL FILTER INSTALLATION				
2					
3	9240140 MISCELLANEOUS WORK (FILTER AGGREGATE)	TON	60,000	\$ 20.00	\$ 1,200,000.00
4	924XXXX MISCELLANEOUS WORK (EXCAVATION, FILTER)	CU.YD.	40,200	\$ 5.00	\$ 201,000.00
5					\$ -
6					\$ -
7					\$ -
8					\$ -
9	SUBTOTAL ITEM 3 - FRS CENTRAL FILTER INSTALLATION				(A) \$ 1,401,000.00
10	MAINTENANCE OF TRAFFIC SHARE <sup>1</sup>	L.SUM	1	1.5% of (A)	\$ -
11	CONSTRUCTION SURVEYING AND LAYOUT SHARE <sup>2</sup>	L.SUM	1	1% of (A)	\$ 14,010.00
12	CONTRACTOR QUALITY CONTROL SHARE <sup>3</sup>	L.SUM	1	1% of (A)	\$ 14,010.00
13	MOBILIZATION SHARE <sup>4</sup>	L.SUM	1		\$ 70,000.00
14	SUBTOTAL CONSTRUCTION COST				(B) \$ 1,499,020.00
15	CONSTRUCTION ENGINEERING AND ADMINISTRATION <sup>5</sup>			8% OF (B)	\$ 119,921.60
16					(C) \$ -
17					\$ -
18	TOTAL ITEM 3 - FRS CENTRAL FILTER INSTALLATION				\$ 1,618,941.60

1. Maintenance of Traffic does not apply to this item of work.
2. Construction surveying and Layout is calculated on a percentage basis (1.0% Fixed rate) of the construction cost.
3. Contractor Quality Control is calculated on a percentage basis (1.0% fixed rate) of the construction cost.
4. Mobilization is established as a fixed lump sum cost.
5. Construction Engineering and Administration is calculated on a percentage basis (8.0% fixed rate) of the construction.

EXHIBIT B  
ITEM 1 SUMMARY BACKUP

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	ITEM 4 - PRINCIPAL SPILLWAY				
2					
3	9999903X PRINCIPAL SPILLWAY, RCB CULVERT NO. 1	L.SUM	1	\$ 342,371.10	\$ 342,371.10
4	ADOT Credit for PRINCIPAL SPILLWAY, RCB CULVERT NO. 1	L.SUM	1	\$ (342,371.10)	\$ (342,371.10)
5				\$ -	\$ -
6				\$ -	\$ -
7				\$ -	\$ -
8					
9	SUBTOTAL ITEM 4 - PRINCIPAL SPILLWAY			\$ -	\$ - (A)
10					
11					
12					
13					
14					
15					
16					
17					
18	TOTAL ITEM 4 - PRINCIPAL SPILLWAY			\$ -	\$ -

**EXHIBIT B**  
**ITEM 1 SUMMARY BACKUP**

Engineer's Estimate Version (95%)  
JPA 03-012  
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Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	ITEM 5 - SIGNAL BUTTE FLOODWAY OUTLET STRUCTURE				
2					
3	MISCELLANEOUS WORK (SIGNAL BUTTE LIFT STATION)	L.SUM	1	\$ 105,000.00	\$ 105,000.00
4	ADOT Credit for MISCELLANEOUS WORK (SIGNAL BUTTE ENERGY DISSIPATION BASIN LIFT STATION)	L.SUM	1	\$ (105,000.00)	\$ (105,000.00)
5					\$ -
6					\$ -
7					\$ -
8					
9	SUBTOTAL ITEM 5 - SIGNAL BUTTE FLOODWAY OUTLET STRUCTURE				\$ - (A)
10					
11					
12					
13					
14					
15					
16					
17					
18	TOTAL ITEM 5 - SIGNAL BUTTE FLOODWAY OUTLET STRUCTURE				\$ -

EXHIBIT B  
ITEM 1 SUMMARY BACKUP

Item No	Item Description	Unit	Quantity	Unit Price	Amount
1	ITEM 6 - RAIN/STREAM AND ALERT GAUGES				
2					
3	ADOT CREDIT FOR RAIN/STREAM GAUGES AND ALERT GAUGES	L.SUM	1	\$ (131,310.00)	\$ (131,310.00)
4					\$ -
5					\$ -
6					\$ -
7					\$ -
8					
9	SUBTOTAL ITEM 6 - RAIN/STREAM AND ALERT GAUGES				\$ (131,310.00) (A)
10					
11					
12					
13					
14					
15					
16					
17					
18	TOTAL ITEM 6 - RAIN/STREAM AND ALERT GAUGES				\$ (131,310.00)

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